

1
2
3
4
5
6
7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 KEVIN ELLIOTT FIELDS,

10 Petitioner, No. CIV S-04-0454 FCD JFM P

11 vs.

12 AL K. SCRIBNER, et al.,

13 Respondents. ORDER

14 _____ /
15 Petitioner is proceeding pro se with an application for a writ of habeas corpus
16 pursuant to 28 U.S.C. § 2254. A telephonic status conference was held in this matter on January
17 18, 2007, at 11:00 a.m. Petitioner appeared in propria persona. David Andrew Eldridge, Deputy
18 Attorney General, appeared for respondents. Upon review of the file, discussion of petitioner
19 and counsel, and good cause appearing therefor, THE COURT ORDERS AS FOLLOWS:

20 By order filed May 26, 2004, respondents were directed to lodge any and all
21 transcripts or other documents relevant to the determination of the issues presented herein. On
22 July 26, 2004, respondents lodged those portions of the state court record that had not been
23 sealed. Respondents noted in their answer that petitioner had referred to sealed portions of the
24 state court record which respondents had “no duty to (and in fact were unable to) lodge those
25 [sealed] portions of the record with this Court.” (Answer at 7, n.3.) Respondents maintain it is
26 petitioner’s duty to provide these records to the court. (Id.)

1 A review of the reporter's transcripts reflects that at least three portions of the trial
2 proceedings were sealed by the state court:

3 1. Transcript of the motion for substitution of counsel held on February 1, 2000
4 (RT 4-46);
5 2. Transcript of the Marsden hearing held on February 15, 2000 (RT 569-78); and
6 3. Transcript of the Marsden hearing held on June 19, 2000 (RT 910-35).

7 These sealed documents are directly related to petitioner's claims herein.

8 During the hearing, counsel discovered that petitioner had attached copies of the
9 two Marsden hearing transcripts to his petition filed with the California Supreme Court, No.
10 S109523. A review of the records lodged by respondents demonstrated that the court has copies
11 of these transcripts. However, neither party nor the court has copies of the transcript from the
12 February 1, 2000 hearing on the motion for substitution of counsel (RT 4-46).

13 Counsel for respondents agreed to ask the state court to forward copies of the
14 February 1, 2000 hearing transcript to this court. Because those documents were filed under seal
15 in state court, they shall also be filed under seal in this court. Counsel also sought leave to
16 address these documents in the event the court decides to consider them.

17 In addition, petitioner notified the court that he had not received a response to his
18 letter of December 30, 2004. Petitioner also stated he had asked the clerk for a copy of the
19 docket sheet for his case, but he had not received a response. Petitioner inquired when he would
20 be allowed to file his traverse. Petitioner was advised that the court granted petitioner a sixty day
21 extension of time to file his traverse by order filed February 17, 2005. Petitioner stated he had
22 not received a copy of that order. The court confirmed petitioner's current mailing address is
23 Corcoran State Prison, P.O. Box 8800, Corcoran, California 93212-8800. A review of the
24 docket sheet reflects petitioner's address was recorded as P.O. Box 3481.

25 Good cause appearing, the Clerk of the Court will be directed to change
26 petitioner's address of record as noted above, and to send petitioner a copy of this court's January

1 28, 2005 and February 17, 2005 orders, the February 8, 2005 notice, including attachment #1,
2 and a copy of the docket sheet for this case. Once this court receives the sealed documents from
3 state court and reviews them, the court will issue a further order addressing respondents' request
4 to respond to that material and granting petitioner additional time in which to file a traverse.¹

5 IT IS HEREBY ORDERED that:

6 1. Respondents shall forthwith ask the San Joaquin County Superior Court to
7 forward copies of the *in camera* hearing on petitioner's motion for substitution of counsel, heard
8 February 1, 2000 (RT 4-46), to this court for filing under seal.

9 2. The Clerk of the Court is directed to change petitioner's address of record as
10 follows: Corcoran State Prison, P.O. Box 8800, Corcoran, California 93212-8800.

11 3. The Clerk of the Court is directed to send petitioner a copy of this court's
12 January 28, 2005 and February 17, 2005 orders, the February 8, 2005 notice, including
13 attachment #1, and a copy of the docket sheet for this case.

14 DATED: January 24, 2007.

15 
16 **UNITED STATES MAGISTRATE JUDGE**
17

18 /001; fiel0454.fb
19
20
21
22
23

24 ¹ Although petitioner did not receive this court's February 17, 2005 order, petitioner has
25 been on notice as of July 1, 2004 of the time prescribed for filing a traverse. Petitioner is
26 cautioned that he should begin preparation of his traverse on his other claims while waiting for
the court's order addressing his request for extension of time inasmuch as the sealed material
only concerns his ineffective assistance of counsel claims.